Disability Justice Centre Project

Declared Places:
Declaring and Meeting the Needs of the Accused with Intellectual or Cognitive Disability

ASID Conference November 2014 (Perth, Western Australia)
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Custody Options for Mentally Impaired Accused

The Criminal Law (Mentally Impaired Accused) Act 1996, section 24(1) provides:

A mentally impaired accused is to be detained in one of four custodial placement options as determined by the Board, until released by an order of the Governor.
Custody Options for Mentally Impaired Accused – Option 1

Authorised Hospital

Only if the mentally impaired accused have a mental illness that can be treated.
Custody Options for Mentally Impaired Accused – Option 2

Prison

(or detention centre for juveniles (who have not attained 18 years of age))
Custody Options for Mentally Impaired Accused – Option 3

Declared Place

The disability justice centre will be the first declared place. It will be established to meet the needs of the specific cohort.
Custody Options for Mentally Impaired Accused – Option 4

Release into the Community
Why do we need ‘declared places’?

• There are limited placement options for mentally impaired accused people with intellectual and cognitive disability who are caught up in the criminal justice system (cohort).
• This cohort is currently detained in mainstream prisons or detention centres.
• This cohort’s behaviour may become institutionalised.
• The “declared places” were intended for the cohort (but were never previously established).
The cohort likely to be detained in a ‘declared place’ (Part 1)

• As of 30 June 2014, 39 mentally impaired accused were under the statutory authority of the Mentally Impaired Accused Review Board (MIARB):
  o 5 female (12.8%), and
  o 34 male (87.2%).

The cohort likely to be detained in a ‘declared place’ (Part 2)

• 27 accused with a diagnosed mental illness (69%)
• 7 accused with a diagnosed intellectual impairment (18%) [this will be the cohort / target group of the disability justice centre] and
• 5 accused with a dual diagnosis of a combined intellectual impairment and mental illness (13%) [those with a primary diagnosis of intellectual disability with be part of the disability justice centre’s cohort]

Background – the role of the Disability Services Commission (Part 1)

The Disability Services Commission (Commission) was/is the government agency most experienced in, and with, the primary purpose of, meeting the needs of people with disability in Western Australia.
Background – the role of the Disability Services Commission (Part 2)

• The Commission is recognising by giving the accused a secure environment (the disability justice centre) and the skills and training (disability justice centre services and supports) to be future responsible citizens, community safety will be protected, the needs of the accused will be met and the vulnerabilities of the accused in the justice system will be significantly decreased.

• *The accused will benefit from an all aboard approach by the Commission, in the disability justice centre, and in society.*
Guiding Principles, Vision & Mission for the Disability Justice Centre

** The guiding principles, vision and mission for the disability justice centre are based on an “all aboard approach”.

** The principles, vision and mission aim to balance and meet the community’s needs and the vulnerabilities and needs of the accused.
Guiding Principles for the Disability Justice Centre

1. Protecting community safety in a positive and responsible way
2. Maximising pro-social and developmental opportunities for each individual
3. Providing a fair, open and just option
4. Positive impacts on those who support the individual, for example family, friends and community.
Vision for the Disability Justice Centre

Positive justice outcomes for individuals, families and the community.
Mission for the Disability Justice Centre

To deliver a contemporary, evidence based disability justice [centre and] service; that provides for developmental opportunities, treatment and the protection of the community.
The need for Legislation

• The disability justice centre was / is a new and unique project.
• Therefore, legislative change was / is needed to enable the Commission to operate the disability justice centre.
Legislation – the essence of the Bill

• The Bill provides for the disability justice centre to be established, for the first time, as a declared place and appropriate alternative to custody in prison / a detention centre.

• Pursuant to the Bill, the disability justice centre will be designed and staffed to provide residents with a therapeutic environment that can provide social support and life skills training.
Legislation – the essence of the Bill (part 2)

The Bill gives the Commission the authority to:
• operate the disability justice centre as a declared place
• manage behaviour of the accused, and give the accused the support to enable him / her to be more calm and in control
• maintain the welfare of the accused in a secure environment, and
• provide the accused with individualised services.
Legislation – main provisions of the Bill –  
Example 1: clauses 5-6 (Part 2)  
Principles & Objectives  
The Bill sets out principles and objectives at / of the disability justice centre). These must taken into account when performing functions under the Bill. These principles include:  
• the protection of the community  
• the protection of the individual residents  
• the best interests of residents who are not adults  
• the training, development of residents, and  
• the provision of appropriate health care for residents.
Legislation – main provisions of the Bill
Example 2: clauses 11-14 (Part 4)
Individual Development Plans (IDPs)

• For the accused who become residents of the disability justice centre, Part 4 of the Bill requires individual development plans (IDP) to be developed.
• Each IDP will include, for example, personalised life skill programs directed to returning the individual resident to responsible participation in the community.
Legislation – main provisions of the Bill
Example 3: clauses 51-56 (Part 10)
Advocacy services for residents

Custodial powers are balanced by a range of safeguards to protect the residents’ welfare.

For example, Part 10 of the Bill provides that the operation of the disability justice centre will be monitored by a specifically designed advocacy service.
Governance of the Disability Justice Centre

• In an “all aboard approach”, the Commission will meet the needs of the accused and community. This will be achieved by:
  – comprehensively developed policies and procedures
  – individualised plans, services, supports and programs
  – human resource management, workforce planning, etc
  – quality management and reporting, and
  – the implementation of the “seven (7) stages of a positive and protective environment” (see next slide - ** please note, “behaviours” will be included in stage 3 considerations)
“All Aboard” Method – Example 1(Part 1): Placement

- As stated, the Criminal Law Mentally Impaired Act 1996 (CLMIA Act) made provision for one or more “declared places” to be established. The disability justice centre will be a declared place.
- The place of custody is to be determined by the Mentally Impaired Accused Review Board (MIARB) within five (5) days of the (court’s) custody order (section 25 CLMIA Act).
“All Aboard” Method
Example 1(Part 2): placement

• As a reflection of the need for the justice system to:
  – have an “all aboard approach” to meet the needs of the accused
  – recognise the Commission’s expertise in people with disability

clause 66 of the Bill inserts sub-paragraph (5) into clause 24 of the CLMIA Act. This provides:
  – a Commission staff representative will sit on MIARB and be involved in placement / review decisions for the accused, and
  – the Minister for Disability has the right to veto the recommendation (for placement in the disability justice centre).
“All Aboard” Method – Example 1 (Part 3):

Placement

Therefore, in addition to the need for an accused to have a predominant disability (not mental illness), be 16+ years old, and be suitable for the services, supports and programs of the disability justice centre, the Bill (via its consequential amendments) recognises the need for the MIARB to:

- not only have an “all aboard approach” to placement but to consider the:
  - individual needs / circumstances of each accused
  - expertise of the Commission, and
  - input of the Commission’s representative on MIARB.
“All Aboard” Method
Example 2 (Part 1):
Leave of absence / gradual release

- Leave of absence (LOA) will be determined / granted by MIARB for each resident of the disability justice centre. LOA follows a principle of gradual release.
- Following a substantial period of successful community access, MIARB will subsequently consider releasing the accused into the community for lengthier periods. This method of gradual release increases over time to a maximum of thirteen (13) out of fourteen (14) days out, and ensures the accused complies whilst ensuring safety of individuals in the community.
“All Aboard” Method

Example 2 (Part 2):
Leave of absence / gradual release

• Therefore, this method of gradual release is aimed at implementing an “all aboard approach” while promoting an inclusive society, protecting the community and ensuring the accused are adequately supported (and given gradual opportunities (or practice)) at being law-abiding citizens.
Results & Implications (Part 1)

- Western Australia’s first disability justice centre is expected to open in Caversham in July 2015.

[Site Address: 130 Lord Street, Caverham, WA]
Results & Implications (Part 2)

• However, the outcome of the establishment of the disability justice centre cannot be predicted with certainty.
• It has been established (throughout this presentation) that the operationalisation of the centre will be focussed on an “all aboard approach”.
• What can be (and in this presentation, has been) foretold is that the implementation of the Bill as an operative Act of Parliament, and emergence of the disability justice centre, will mean that the specific needs of accused are considered and met as part of the Commission’s “all aboard approach” to justice for people with disability.
Questions